



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 8, 2009

Ms. Rachael Paschal Osborn, Executive Director
Center for Environmental Law and Policy
25 West Main, Suite 234
Spokane, Washington 99201

Re: Petition for Declaratory Order on Stock Watering Purposes Exemption in RCW 90.44.050

Dear Ms. Osborn:

This letter is in response to your December 11, 2008 letter conveying a petition for a Declaratory Order under the Administrative Procedure Act (APA), RCW 34.05.240. Your letter requests that the Department of Ecology (Ecology) issue a Declaratory Order regarding seven issues relating to the use of water for stock raising facilities under the groundwater permit exemption in 90.44.050. The specific circumstance to which your issues are addressed is the new feedlot proposed by Easterday Ranches in northern Franklin County.

The APA provision on Declaratory Orders (RCW 34.05.240(7)) prohibits an agency from entering a Declaratory Order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a Declaratory Order. On December 17, 2008, I had a telephone conversation with Mr. Bill Easterday and Mr. Cody Easterday, and, at that time, the Easterdays informed me that they are not willing to give their consent to Ecology to enter a Declaratory Order on the pending petition. Consequently, Ecology is declining entry of a Declaratory Order in accordance with RCW 34.05.240(5)(d).

An additional reason Ecology is declining to enter a Declaratory Order is our belief that issues relating to the stock watering element of the groundwater exemption would be best addressed by the state legislature. During the 2009 legislative session, Ecology will be engaging with legislative leaders to encourage them to review and consider amending the groundwater exemption generally and the stock watering exemption in particular. I encourage you to participate in the legislative process on this topic.

If you have any questions further questions, please contact Kenneth Slattery, Water Resources Program Manager at kshw461@ecy.wa.gov / (360) 407-6602.

Sincerely,

Jay J. Manning,
Director

Rachael Osborn
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bcc: Grant Pfeifer
Ken Slattery